

In the Court of Appeals of the State of Alaska

Dustin Durran Peters,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13180**

Order

Motion for Reduction of Costs of
Counsel

Date of Order: **5/25/2021**

Trial Court Case No. **3PA-18-01269CI, 3PA-13-03222CR**

The Appellant, Dustin Durran Peters, appealed the superior court’s dismissal of his application for post-conviction relief, which challenged the parole board’s extension of his period of parole in light of AS 33.16.220(i) as amended by Senate Bill 91. The appeal was later dismissed after briefing had already occurred. The record shows that Mr. Peters’s appeal was moot prior to the filing of the opening brief. Following the dismissal of Mr. Peters’s appeal, the Clerk of the Appellate Courts issued a notice that it intended to enter judgment for the cost of appellate counsel in the amount of \$1500. *See* Alaska Appellate Rule 209(b)(6).

Under Alaska Appellate Rule 209(b)(5), at the conclusion of any appellate case in which a criminal defendant is represented by court-appointed counsel, the Clerk of the Appellate Courts is directed to “enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant’s conviction was reversed by the appellate court.” Because Mr. Peters was represented by court-appointed counsel in this felony merit appeal—and because Mr. Peters’s conviction was not reversed—the

Appellate Clerk notified Mr. Peters that it intends to enter judgment against him in the amount of \$1500 for the cost of counsel.

Mr. Peters objects to the Clerk's notice. Because Mr. Peters objects to the Clerk's intent to enter judgment against him, he is entitled to judicial reconsideration of the Clerk's decision. *See* Alaska Appellate Rule 503(h)(2)(A).

In his opposition to the entry of judgment for the cost of appellate counsel, Mr. Peters argues (among other things) that the cost of appellate counsel should be waived in his case because his appeal became moot prior to the due date of his opening brief. He asserts that his attorney should have advised him that the appeal had become moot rather than requesting a 390-day extension of time to file the opening brief. He further asserts that if he had been so advised, he could have requested this Court to dismiss the appeal before he incurred the cost of appointed appellate counsel.

This Court may, under Appellate Rule 521, relax the appellate rules where strict adherence to them will work surprise or injustice. Because strictly adhering to Appellate Rule 209 in this case would work an injustice, the decision of the Appellate Clerk to enter a judgment of \$1500 against Mr. Peters is **REVERSED**. Mr. Peters will not be required to pay any portion of the cost for his appointed appellate counsel in this case.

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Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in cursive script that reads "Joyce Marsh". The signature is written in dark ink and is positioned above a horizontal line.

Joyce Marsh, Deputy Clerk

Distribution:

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